IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1868 OF 2007

Smt. Sushila Anandrao Devane ...Appellant
Vs.
Mr. Chandrakant G. Majgaonkar & Ors. ...Respondents

Mr.Bipin Jagoji, Advocate for Appellants

CORAM: SMT.ROSHAN DALVI,J.
DATED: 20TH JUNE, 2007

P.C.

1. This Appeal challenges the judgment dated 9th October, 2006 of the learned Commissioner for Workmen's Compensation at Kolhapur. The application of the workman has been partly allowed. The learned Commissioner has held that the workman is not entitled to compensation on the basis of 100% permanent disablement.

2. The Workman/claimant was a rikshaw driver. The learned Judge has considered the extent of his injury from the evidence of the Doctor, who was examined by the claimant as witness no.2. The Doctor deposed that he was operated on 10th May, 1998 for nailing of tibia of both legs.

He was given indoor and outdoor treatment. He has issued the disability certificate on 21st November, 1998. A hip replacement operation was required for total replacement of hip. But the claimant was not operated for hip replacement.

3. The learned Commissioner has considered the evidence of the Doctor. It is an admitted position that the injuries suffered by the claimant resulted in shortening of his left leg. The learned Commissioner has considered that for driving the rikshaw after the accident his right leg would be essentially used to operate the break, whereas right wrist would be used to accelerate the speed. The Advocate on behalf of the Appellant who challenged the reasoning and claim 100% disability has argued that the workman has to pull the handle with his left hand. Admittedly that does not entail use of the injured left leg.

4. The Advocate further argued that in case of lack of diesel and petrol he would be required to push the rikshaw which he cannot do. There is no such evidence on record. However, the fact remains that even for pushing, the use of all limbs are required, more specially the hands.

5. The learned Judge has considered the two Judgments shown by the claimants and seen how the claimant's case

was completely distinguishable. In case of Pratap Narain Singh Deo Vs. Shrinivas Sabata reported in 1976 ACJ 141 the left arm above elbow of a carpenter was amputated. Since the Carpenter needs his both hands for carpentary work, it was held that, that tentamounts to permanent disablement for carrying out his work.

6. In the case of Arjun Gangappa Kore Vs. Nirmal Bhagchand Bothra reported in 2005, a driver of the truck, sustained an injury which left him unable to bend either the right leg or foot. That is not the case with the claimant. Hence, the reasoning of the learned Judge cannot be faulted.

7. The Appellant's Advocate has drawn my attention to another Judgment in the case of Executive Engineer Public Works Department Vs. Bhimrao Manikrao Unhale, reported in 1997 ACJ 1141 in which the amputation of left arm above elbow joint of a driver was held to be total disablement. Unfortunately that case is completely distinguishable.

8. The result of the injury suffered by the workman does not incapacitate him to do all the work which he was capable of at the time of accident. Since the work he was performing was driving an auto-rikshaw. The Advocate for the

Appellant contends that all the work could mean and include the work required in case of emergencies such as not having diesel in the vehicle and also pushing it. That argument is misconceived. Since the claimant was a rikshaw driver, it has to be seen that he can drive the autorikshaw. The injury shortened his left leg. Yet he can drive the autorikshaw. The observations of the learned Commissioner as well as his reasoning on facts are correct. There is no substantial question of law arising in this Appeal. Hence, the Appeal is dismissed.

(SMT. ROSHAN DALVI, J.)